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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/993,309	11/16/2001	Kristopher W. Gerulski	J-3047A	1717

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EXAMINER

PETERSON, KENNETH E

ART UNIT	PAPER NUMBER
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3724

DATE MAILED: 04/21/2003

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Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/993,309

Applicant(s)

GERULSKI ET AL.

Examiner

Kenneth E Peterson

Art Unit

3724

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 31 March 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-25 is/are pending in the application.
- 4a) Of the above claim(s) 11-25 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-10 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 6,7,8.
- ☐ Interview Summary (PTO-413) Paper No(s). _____.
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: _____.

1. Applicant's election with traverse of Group I and Species of figure 2 in Paper No. 10 is acknowledged. The traversal is on the ground(s) that there is no serious burden. This is not found persuasive because the non-elected group would need to be searched in class 493, whereas the elected group was searched in classes 225 and 206. Applicant's further arguments are unpersuasive, since proof of one-way distinctness has already been set forth in the original restriction.

The requirement is still deemed proper and is therefore made FINAL.

2. Applicant's IDS's, received 31 Jan 02, 16 May 02 and 17 June 02 have been considered. All of the references cited on the 31 Jan 02 IDS are redundant to those filed later on and thus have been lined thru.

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1-3,5-9 are rejected under 35 U.S.C. 102(b) as being anticipated by Hurh, who shows a wound film dispenser with all of the recited limitations including a base having a bottom wall (22) having an angled retention wall (26c) with an arcuate aperture (28) and an angled bracing flap (26b) extending from a topside thereof. Hurh further shows a back wall (16) having a major flap (12) and a front wall (34) having a minor flap (36). It is noted that the Hurh dispenser is a handheld device usable in several different

orientations, and thus there is much leeway in what one might consider to be the bottom, front and back sides.

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 4 and 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hurh, who shows a wound film dispenser with most of the recited limitations as set forth above.

Hurh does not state what kind of material his container is made out of. Examiner takes Official Notice that it is well known to make wound film dispensers out of single-ply chipboard. It would have been obvious to one of ordinary skill in the art to have made Hurh's container out of single-ply chipboard, as is well known, in order to cheaply manufacture it.

Hurh's angled bracing flap (26b) is not wedge shaped. However, in the art of making containers from sheets of cardboard, it is well known to bevel various flaps, thus making them wedge-shaped, in order to ease^e assembly of the device. A prime example of this is shown by Hurh himself with flaps 17 and 36. It would have been obvious to one of ordinary skill in the art to have made Hurh's angled bracing flap (26b) be wedge-shaped, as taught by Hurh himself, in order to ease the assembly of the container (less prominent corners to catch on one another).

7. Made of record but not relied on is a patent to Metzger showing a pertinent wound film dispenser.

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ken Peterson whose telephone number is 703-308-2186. The examiner can normally be reached on Monday thru Thursday between 7am and 4pm. If attempts to reach the examiner are unsuccessful, the examiner's supervisor, Allan Shoap can be reached on 703-308-1082.

In lieu of mailing, it is encouraged that all formal responses be faxed to 703-872-9302. Any inquiry of a general nature or relating to the status of this application should be directed to the receptionist whose telephone number is 703-308-1148.

kp
April 15, 2003



KENNETH E. PETERSON
PRIMARY EXAMINER